

*An agreement was  
approved - March Fund May 2008*

*Draft - Not sure  
if final is different*

Preparer: David S. Steward, Assistant Attorney General PH: 515-281-5351 FAX: 515-242-6072  
IOWA DEPARTMENT of JUSTICE, State Capitol Complex, Des Moines, IA 50319  
R:\2\UST Board\UST-DNR-NFA 28E Agreement 050807.wpd September 12, 2007

**28E AGREEMENT**  
**BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND**  
**STORAGE TANK FUND BOARD, AND THE IOWA DEPARTMENT OF NATURAL**  
**RESOURCES for FUNDING OF AN ATTORNEY STAFF POSTION WITH THE IOWA**  
**DEPARTMENT OF NATURAL RESOURCES**

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter "Board"), with its Administrator's office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter "DNR"), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa, and is effective as of the date it is fully executed by all parties.

**I. PURPOSE**

The purpose of this Agreement is to establish the terms and conditions under which the Board will provide supplemental funding to the DNR to hire and retain a full-time attorney position when alternative sources of funding are unavailable. It is the intent of the Board and the DNR that this attorney position will, in part, serve the joint interest of the Board and DNR by providing legal services designed to assist in the regulatory closure of leaking underground storage tank (LUST) sites which are or may be eligible for benefits under programs administered by the Board under Iowa Code Chapter 455G ("UST Fund eligible sites"), and other non-UST Fund eligible sites which may influence the closure of UST Fund eligible sites. The Board and the DNR acknowledge that the funding under this Agreement is supplemental, and the Board will provide funding for the attorney position only in the event the DNR cannot obtain funding from other sources. The Board acknowledges the attorney will perform other duties for the DNR in addition to the scope of work identified in this Agreement.

## **II. TERM**

Unless otherwise terminated in accordance with the terms of this Agreement, the Agreement shall be in effect as of its effective date to June 30, 2012, with an option to renew the Agreement for an additional five years (i.e., June 30, 2017) based on the mutual agreement of both the DNR and the Board.

## **III. ADMINISTRATION**

The hiring, retention and supervision of this attorney position shall be administered by the DNR, its Director and other delegated management personnel including but not limited to the Chief of the Iowa Geological Survey and Land Quality Bureau, the underground storage tank ("UST") section supervisor and the Chief of the Legal Services Bureau in consultation with the Board and its Administrator. It is the intent of the Board and the DNR that they meet on a regular basis to review the work of the attorney, establish goals and objectives, prioritize work efforts and other matters related to the funding and administration of this position consistent with the terms and conditions specified herein.

## **IV. ACQUIRING AND HOLDING OF PROPERTY UNDER THIS AGREEMENT**

All real and personal property used or acquired under the terms of this Agreement shall be held in the name of the DNR.

## **V. AGREEMENT:**

The Board and the DNR agree that the work activities of this position shall be administered consistent with the scope of work outlined as follows:

The primary job responsibility for one-half of the time for this position is to conduct legal work on matters related to the regulation of LUST sites and the objective of moving sites to regulatory closure and a no-further-action classification. It is the intent that this legal work not be directly related to the operation and maintenance regulations applicable to underground storage tanks except to the extent those provisions help to meet the primary objective of closing LUST sites. Specific duties will include:

- Draft legal opinions, letters, memoranda and other related documents related to LUST laws for use in the preparation of opinions, legislative reports, briefs, contracts and other related papers or legal documents.
- Provide both written and verbal opinions to the DNR Director and staff, and the Environmental Protection Commission relating regarding regulation of LUST sites.
- Respond to inquiries from the general public regarding Iowa's LUST laws.

- Assist staff in potential responsible party searches, including site ownership and historical record searches, and access agreements. The duties will attempt to target sites that are or may be eligible for benefits under the Board's remedial program.
- Work with Board staff, DNR LUST staff and private insurance companies to resolve issues of allocation of liability between UST Fund eligible releases and new releases potentially covered under a financial assurance mechanism.
- Help to design and implement DNR compliance, tracking and enforcement plans consistent with DNR enforcement priorities with the objective of expediting completion of corrective action and regulatory closure with an emphasis on sites that are or potentially are UST Fund eligible. This includes setting up an internal procedure for tracking sites that are out of compliance with regulatory deadlines for assessment, free product recovery and further corrective action and developing an enforcement referral process.
- Work with Board staff and potentially UST Fund eligible claimants to collect data and facts relevant to claim eligibility.
- Provide advice, education and training to DNR staff on issues related to UST Fund claim eligibility.
- Provide information on funding programs, including innocent land owner benefits, liability issues, the global settlement and remedial benefits programs, especially targeting priority and/or UST Fund eligible sites. Act as a liaison with Board staff in researching status of potential claims and claimants.
- Review and track and provide consultation to staff regarding environmental covenants and institutional controls as submitted to the DNR, including institutional control mechanisms for preventing plastic water lines from being installed.
- Conduct investigations of a limited scope to obtain facts, study legal precedents and prepare recommendations in enforcement cases, including drafting enforcement referrals, administrative orders, and litigation reports for non-compliant LUST sites.
- Implement and maintain an enforcement and compliance tracking system between DNR field offices and central office, including, but not limited to, sending and tracking overdue compliance letters, institutional controls, environmental covenants and memoranda of agreements, especially focusing on priority and/or UST Fund eligible sites.

- Implement, monitor and update targeted enforcement priorities, including, but not limited to, public service announcements for overdue Tier 1/Tier 2 reports, free product assessment and memoranda of agreement for completion of corrective action.

The Board Administrator and DNR management and legal staff agree to meet no less than quarterly to review and prioritize work activities, establish goals and objectives, and provide consultation to assure mutual satisfaction with the terms of this Agreement.

## **VI. FINANCING**

The DNR will aggressively seek funding from the US Environmental Protection Agency (EPA) for this position. In the event that EPA funding is not available, the DNR will seek alternative sources of funding for the attorney position prior to seeking funds from the Board. In the event no alternative funding sources are available, the DNR will utilize other funding for one-half of the position costs, and the Board will fund the other one-half of the position costs. It is estimated that the total cost for this position will be as follows:

State Fiscal Year 2008: \$46,000.00 (10 months)  
 State Fiscal Year 2009: \$57,000.00  
 State Fiscal Year 2010: \$70,000.00  
 State Fiscal Year 2011: \$77,000.00  
 State Fiscal Year 2012: \$82,000.00

When paying for one-half of the position, the Board shall deposit one-half of the costs for this position in an account specified by DNR by July 15<sup>th</sup> of that fiscal year.

## **VII. AMENDMENT**

This Agreement may be amended from time to time by written agreement of the Parties.

## **VIII. TERMINATION**

**A. Termination Upon Mutual Consent.** This Agreement may be terminated upon the mutual written consent of the Parties.

**B. Termination by the Board Prior to an Expiration Date.** Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, the Board shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the DNR as a result of any of the following:

1. There are insufficient funds available to continue funding as provided in this Agreement;

2. A change in the law prevents or substantially impairs the Board's ability to participate in this Agreement; or

3. The attorney position fails to perform duties described in this Agreement at a quality or quantity that can be reasonably expected by the Board.

**C. Termination by the DNR Prior to an Expiration Date.** The DNR may choose to terminate this Agreement for any reason at the end of a fiscal year in which the Board is providing funding by giving written notice to the Board's Administrator at least 60 days prior to the end of the fiscal year. If the Board is not providing funding during a fiscal year, the DNR may choose to terminate the Agreement upon 30 days written notice to the Administrator.

#### **IX. RENEWAL**

The Board and the DNR may exercise the option to renew this Agreement for an additional five year period by mutual agreement.

#### **X. NOTICES**

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

##### To the Board

Iowa UST Fund Board  
Attn. Scott Scheidel  
2700 Westown Parkway, Suite 320  
West Des Moines, Iowa 50266

##### To the DNR

Iowa Department of Natural Resources  
Attn. Ed Tormey and Tim Hall  
Wallace State Office Building  
Des Moines, IA 50319

#### **XI. APPLICABLE LAW**

This Agreement is to be governed by the laws of the State of Iowa.

#### **XII. FILING AND RECORDING**

It is agreed the DNR will electronically file this Agreement with the Secretary of State, and electronically file any amendment, modification, or notice of termination of this Agreement within thirty days as provided in Iowa Code section 28E.8 as amended by 2007 Iowa Acts, HF 808.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

**IOWA COMPREHENSIVE PETROLEUM  
UNDERGROUND STORAGE TANK  
FUND BOARD**

**IOWA DEPARTMENT OF NATURAL  
RESOURCES**

BY: \_\_\_\_\_  
Susan Voss, Chair

BY: \_\_\_\_\_  
Richard A. Leopold, Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_